

Supreme Court, U. S.  
**FILED**

**FEB 24 1977**

MICHAEL RODAK, JR., CLERK

**APPENDIX**

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IN THE  
**Supreme Court of the United States**  
OCTOBER TERM, 1976

**No. 76-496**

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BENSON A. WOLMAN, *et al.*,

*Appellants,*

—v.—

MARTIN W. ESSEX, *et al.*,

*Appellees.*

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO

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FILED OCTOBER 7, 1976

PROBABLE JURISDICTION NOTED JANUARY 10, 1977

IN THE  
SUPREME COURT OF THE UNITED STATES

October Term, 1976

No. 76-496

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BENSON A. WOLMAN, ET AL.,

Appellants,

-v.-

MARTIN W. ESSEX, ET AL.,

Appellees.

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ON APPEAL FROM THE UNITED STATES  
DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF OHIO

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DOCKET ENTRIES

<u>DATE</u>	<u>NO.</u>	<u>PROCEEDINGS</u>
11-18-75	1	Complaint filed.
11-18-75	2	Civil cover sheet filed.
11-18-75	3	Praecipe filed.
11-18-75	4	Motion for pre inj filed.
11-21-75	5	Marshal's return filed, served Gertrude Donahey on 11-20-75. \$3.00 served Ferguson, Feigenbaum, Grit, Koloski, Kane, Board of Education, Essex, and State Board on 11-18-75. \$24.00
11-28-75	6	Memo contra motion for prel inj filed by defts.
12-05-75	7	Memo of defts in opposition to motion for prel inj filed.
12-09-75	8	Answer of defts filed.
12-10-75	9	Motion for TRO filed, memo attached.
12-10-75	10	TEMPORARY RESTRAINING ORDER filed. (cert cc counsel for service.)
12-10-75	11	Praecipe filed. re for ser- vice of the TRO by counsel.
12-11-75	12	Opinion filed: Judge Kinneary requests a Three Judge Court. (cmt Wolman/Ellis/Young/ Phillips).
12-11-75	13	Notification and certification filed. re for Three Judge Court. (cmt Wolman/Ellis/ Young/Judge Phillips):
12-16-75	14	Affidavit of service filed. re of the TRO.



12-12-75 15 DESIGNATION FILED, this is to be decided by Three Judge Court (cmt count Judges).

01-16-76 16 Answer of defts, Grit, Kane, Koloski and Shane filed.

01-20-76 17 Consent order filed: Alvin Shames is to be added in substitution for Mrs. Hanna Feigenbaum, and Mrs. Hanna Feigenbaum is dismissed as a party (cmt Wolman/Ellis/Young/Judges).

01-27-76 Letter from David J. Young, to the Honorable Judge Joseph P. Kinneary made a part of the record.

02-13-76 18 Consent order filed. re modification of TRO issued 12-10-75. (cmt counsel/Judges).

03-16-76 19 Stipulation of facts filed.

04-02-76 20 Brief of defendants Martin W. Essex, State Board of Education, Gertrude W. Donahey, Thomas E. Ferguson and Board of Education of the City School Dist. of Columbus, Ohio, filed.

04-05-76 21 Trial Memorandum of nonpublic school defendants, filed.

04-05-76 22 Brief of the Ohio Free Schools Association as amicus curiae, filed.

04-05-76 23 Brief of Plaintiffs, filed.

05-17-76 24 Exhibits A tru. D. to stipulation of facts, filed.

05-19-76 25 Amended Disignation--Three Judge Court--Hon. John W. Peck, Judge, U.S. Court of Appeals for the Sixth Circuit, Hon. Joseph P. Kinneary, Judge, U.S. District Court and Hon. Robert M. Duncan, Judge, U.S. District

Court, filed. Copy to three Judges and counsel.

06-01-76 Note: Trial on the merits before three Judge Panel had.

06-10-76 26 Plaintiffs post hearing memo, filed.

06-11-76 26A Non Public School Parent Def'ts. Post. Hearing Memo., filed.

07-21-76 27 Opinion, filed.

07-21-76 28 Order, filed. Section 3317.06 of the O.R.C. is constitutional and plaintiffs' complaint is without merit. This action is dismissed.

07-21-76 29 Judgment, filed. Section 3317.06 of the ORC is constitutional and plaintiffs' complaint is without merit. This action is dismissed. CMT Kancelbaum, Ellis, David Young and Martin. (cmt to all judges)

07-28-76 30 Motion for continuation of injunction pending appeal, filed.

08-02-76 31 Memo contra motion for injunction pending appeal filed.

08-05-76 32 Order filed: the Court declines to reinstate the injunction entered by this Court prior to the determination on the merits of the issue presented in this case. (cmt Judges/counsel).

08-06-76 33 Memo of state defts, in opposition to motion for injunction pending appeal.

08-10-76 34 Plaintiffs notice of appeal, filed. cmt all counsel.

08-10-76 35 Request for certification and transmittal of the record, filed.

09-19-76 Record Certified to U.S. Supreme Court.



[filed November 18, 1975]  
IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

BENSON A. WOLMAN )  
3107 Midgard Road )  
Columbus, Ohio 43202 )

FREDRICK CHAMBERS )  
2010 Carlton Drive )  
Kent, Ohio 44240 )

PATRICIA J. KEENAN )  
1308-B Woodbrook Lane )  
Columbus, Ohio 43223 )

BARBARA KAYE BESSER )  
3554 Stoer Road )  
Shaker Heights, Ohio )  
44122 )

NANCY R. TERJESEN )  
4530 Sunnybrook Road )  
Brimfield, Ohio 44240 )

MARJORIE WRIGHT )  
6285 Vista Ridge Lane )  
Cincinnati, Ohio 45227, )

Plaintiffs, )

-vs- )

CIVIL ACTION  
NO. C-2-75-792

COMPLAINT

MARTIN W. ESSEX, SUPERINTENDENT )  
OF PUBLIC INSTRUCTION OF THE )  
STATE OF OHIO )  
65 South Front Street, Room 808 )  
Columbus, Ohio 43215 )

STATE BOARD OF EDUCATION )  
c/o MARTIN W. ESSEX, SECRETARY )  
65 South Front Street, Room 808 )  
Columbus, Ohio 43215 )

GERTRUDE W. DONAHEY )  
Treasurer of the State of Ohio )  
State Office Tower )  
Columbus, Ohio 43215 )

THOMAS E. FERGUSON )  
Auditor of the State of Ohio )  
88 East Broad Street )  
Columbus, Ohio 43215 )

BOARD OF EDUCATION OF THE CITY )  
SCHOOL DISTRICT OF COLUMBUS, )  
OHIO )  
c/o WILLIAM GUY, Clerk )  
270 East State Street )  
Columbus, Ohio 43215 )

and )

MRS. HANNA FEIGENBAUM )  
MR. JAMES GRIT )  
MR. EWALD KANE )  
MRS. HELEN S. KOLOSKI )  
through their attorney )  
DAVID J. YOUNG )  
250 East Broad Street )  
Columbus, Ohio 43215, )

Defendants. )

## C O M P L A I N T

### Jurisdiction.

1. Plaintiffs are citizens and taxpayers of the United States and the State of Ohio who bring this action for preliminary and permanent injunctions against the use of funds of the State of Ohio in a manner having the primary effect of advancing religion and fostering excessive entanglement between the State government and religious institutions in violation of the First and Fourteenth Amendments of the United States Constitution, and for a declaration that the State statute authorizing the expenditure of said funds violates said Amendments of the United States Constitution. Jurisdiction is conferred upon this Court by 28 U.S.C. §1331, this being a suit wherein the matter in controversy exceeds the sum or value of \$10,000.00, exclusive of interest and costs, arising under the Constitution of the United States.

2. Jurisdiction is also conferred upon this Court by 28 U.S.C. §§1343(3) and 2201 and 42 U.S.C. §1983, this being a suit for declaratory and equitable relief authorized by law to be commenced by a citizen of the United States to redress deprivations under color of state law of rights, privileges and immunities secured by the Constitution and laws of the United States.

### Defendants.

3.(a) Defendant Martin W. Essex is the duly appointed and acting Superintendent of

Public Instruction of the State of Ohio and, as such, is the secretary and chief executive and administrative officer of the State Board of Education of Ohio and the Chief Administrative Officer of the State Department of Education of the State of Ohio. Defendant Essex and the agencies mentioned of which he is the chief officer are charged by law with the implementation of the Ohio statute herein challenged.

(b) Defendants Gertrude W. Donahey and Joseph T. Ferguson are respectively the duly elected Treasurer and Auditor of the State of Ohio and are charged by Ohio Law with making and approving the disbursement of public funds of the State of Ohio for the unconstitutional purposes under the Ohio Statute herein challenged.

(c) Defendant Mrs. Hanna Feigenbaum is the mother and next friend of a child enrolled in the Columbus Torah Academy (Columbus, Ohio), a sectarian institution which is a potential recipient, and whose students are potential recipients, of services, materials, or other benefits as provided in Section 3317.06 of the Ohio Revised Code (referred to in paragraph 4 et seq.); defendant Mr. James Grit is the father and next friend of a child enrolled in Celeryville Christian School (Willard, Ohio), a sectarian institution which is a potential recipient, and whose students are potential recipients, of services, materials, or other benefits as provided in Section 3317.06 of the Ohio Revised Code; defendant Mr. Ewald Kane is the father and next friend of a child enrolled in St. Paul Lutheran School (Westlake, Ohio), a sectarian institution which is a potential



recipient, and whose students are potential recipients, of services, materials, or other benefits as provided in Section 3317.06 of the Ohio Revised Code; and defendant Mrs. Helen S. Koloski is the mother and next friend of a child enrolled in Immaculate Conception (Columbus, Ohio), a sectarian institution which is a potential recipient, and whose students are potential recipients, of services, materials, or other benefits as provided in Section 3317.06 of the Ohio Revised Code. Defendants Feigenbaum, Grit, Kane and Koloski have indicated through their counsel, David J. Young, that they have litigable interests herein and, unless included as defendants, they will seek to be intervening defendants in this action; plaintiffs, having no objection to their inclusion, having been apprised by their counsel that there are no complicating factors, and seeking to expedite these proceedings, hereby includes them as party defendants at their request.

(d) The defendant Board of Education of the City School District of Columbus, Ohio, is the duly created body corporate and politic which owns and operates the public schools in said school district and which is required by the Ohio Statute herein challenged to use and administer the use of state funds within said school district for the religious purposes herein challenged as contrary to the First and Fourteenth Amendments.

#### Claims.

4. On August 29, 1975, the Governor of Ohio signed into law an Act of the General

Assembly known as Senate Bill 170, part of which is or will be codified as Section 3317.06 of the Ohio Revised Code (herein called the "Act"). A copy of the Act is attached to this complaint, marked Exhibit "A" and incorporated by reference as a part of this complaint.

5. As a part of the Act, as signed by the Governor, the sum of \$44,400,000.00 previously appropriated for expenditure during each year of the Ohio fiscal biennium, 1975-76 and 1976-77, for the non-public programs pursuant to §3317.062 O.R.C. is reallocated to §3317.06 (which has been renumbered from 3317.062), hereinafter described.

6. The Governor has publicly asserted that the Act became effective as an appropriation measure immediately upon his signing it, and the Attorney General of Ohio has publicly rendered an opinion that such is the case; however, this assertion is being challenged in litigation (to which Plaintiffs are not parties) in the Common Pleas Court of Franklin County. If the Act is not an appropriation measure, it will become effective ninety days after it was signed into law. Thus, the Act is either presently in effect or will become effective in the immediate future.

7. The Act provides, in essence, that monies paid to the school districts from public funds shall be used for the following purposes for the benefit of non-public schools or their pupils:<sup>\*</sup>/

<sup>\*</sup>/ The description herein touches only the



(A) To purchase secular textbooks and to loan them to pupils attending non-public schools within the district or to their parents. As used in this section, the definition of textbook includes a "book substitute."

(B) To purchase and to loan to pupils attending non-public schools within the district or their parents "secular" instructional material which are incapable of diversion to religious purposes and to hire clerical personnel to administer the lending program.

(C) To purchase and to loan to pupils attending non-public schools within the district or their parents "secular" instructional equipment which is incapable of diversion to religious use and to hire clerical personnel to administer the lending program.

(D) To provide physician, nursing, dental and optometric services to pupils in the non-public schools.

(E) To provide diagnostic psychological services in the non-public schools.

(F) To provide therapeutic and speech and hearing services to pupils of non-public

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general character of the programs. The Act is set out in Exhibit "A" and no effort is made to quote or paraphrase all significant provisions. Subparagraphs designated by capital letters, such as ('A'), etc. refer to the similarly designated paragraphs of the Act.

schools, such services to be provided in public schools, public centers or in mobile units located off the non-public premises (and to provide transportation to and from the public schools or public centers).

(G) To provide guidance and counseling services to pupils of non-public schools, such services to be provided in public schools, public centers or in mobile units located off the non-public premises (and to provide transportation to and from the public schools or public centers).

(H) To provide remedial services to pupils attending non-public schools, such services to be provided in public schools, public centers or in mobile units located off the non-public premises (and to provide transportation to and from the public schools or public centers).

(I) To supply tests and scoring services for use by pupils attending non-public schools.

(J) To provide programs for the deaf, blind, emotionally disturbed, crippled and physically handicapped children attending non-public schools, such services to be provided in the public schools, in public centers or in mobile units located off the non-public premises (and to provide transportation to and from the public schools or public centers).

(K) To provide such field trip transportation and services to non-public school students as are provided to public school students in the district.

8. Other paragraphs of the Act include provisions for storage of loaned instructional material and equipment on the non-public school premises, and the performance of the duties of public clerical staff in the non-public premises when same is determined by the State Department of Education to be necessary and appropriate for efficient implementation of the lending program. Other provisions not paraphrased herein but appended as part of Exhibit "A" include various funding and administrative clauses and limitations, and authorize the State Department of Education to adopt guidelines and procedures for the administration of the programs and services contemplated by the Act, and for the reimbursement of the costs incurred.

9. On the 17th day of November, 1975, this Court declared Ohio's auxiliary services and materials contained in Ohio Rev. Code §3317.062 law unconstitutional as violative of the First and Fourteenth Amendments. The Act described above provides substantially the same services and materials as those invalidated by this Court in said previous litigation, and has appropriated substantially the same funds for this purpose.

10. The overwhelming majority of non-public schools in Ohio are parochial religious schools operated and maintained by religious institutions primarily for the furtherance of sectarian education, and such schools include in their curriculum sectarian courses, devotional exercises, and prayer. On information and belief, some of these non-public schools impose religious qualifications on student

admission and faculty appointments and promote pupil attendance at religious activities and adherence to the dogma of their particular denomination or faith. Most of the non-public schools in Ohio are an integral part of the religious mission of their sponsoring church, and have as a substantial part of their purposes the inculcation of religious ideas and values.

11. The Act has a primary effect of advancing religion and fostering a continuing and excessively intrusive relationship between state agencies and religious institutions. Further, the Act will factionalize the electorate along religious lines.

12. The Act is being, or about to be, administered and implemented by the Defendants and will continue to be implemented by them unless the relief herein demanded is granted. Such implementation of the Act is causing and will cause expenditure of State funds raised by taxation for financial aid to religion in a manner violative of the First and Fourteenth Amendments.

13. The Act, on its face and as applied, is a law respecting an establishment of religion which is prohibited by the First Amendment as made applicable to the States by the Fourteenth Amendment.

14. This suit involves a genuine case and controversy between the Plaintiffs and the Defendants.

15. Plaintiffs have no plain, speedy or adequate remedy at law for the violations of their rights described above, and will suffer irreparable injury unless the injunctions demanded are granted.

WHEREFORE, Plaintiffs demand

(a) preliminary injunctions against the expenditure of state funds under the Act; and

(b) upon final hearing and determination, that the preliminary injunctions be made permanent except to the extent that any severable provisions of the Act may appear constitutional; and

(c) a declaration that the Act violates the Establishment Clause of the First Amendment made applicable to the States through the Fourteenth Amendment; and

(d) an award of costs and reasonable attorneys' fees for this action; and

(e) such other relief as may appear necessary or appropriate including the costs of this action.

/s/ Joshua J. Kancelbaum  
Joshua J. Kancelbaum  
2121 The Illuminating Bldg.  
Cleveland, Ohio 44113  
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Clyde Ellis  
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Of Counsel:

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American Civil Liberties Union  
of Ohio Foundation, Inc.  
33 Public Square, Suite 210  
Cleveland, Ohio 44113  
(216) 241-3646

[Exhibit A. §3317.06 of the Ohio Revised Code, appears in the Appendix to the Jurisdictional Statement at pp. A34-A38.]



[filed December 9, 1975]  
IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

BENSON A. WOLMAN, ET AL., :  
Plaintiffs, :  
v. : Civil Action  
: No. C-2-75-792  
MARTIN W. ESSEX, ET AL., : Judge Kinneary  
Defendants. :

ANSWER OF DEFENDANTS MARTIN W. ESSEX,  
STATE BOARD OF EDUCATION, GERTRUDE W. DONAHEY,  
THOMAS E. FERGUSON, AND BOARD OF EDUCATION OF  
THE CITY SCHOOL DISTRICT OF COLUMBUS, OHIO

Defendants for their Answer to the Complaint filed herein state as follows:

1. Defendants, upon information and belief, admit that the plaintiffs are citizens and taxpayers of the United States and the State of Ohio.

2. Martin W. Essex is Superintendent of Public Instruction of the State of Ohio. Defendant Essex is secretary to the State Board of Education and the chief administrative officer of the Department of Education. The Department of Education has authority to adopt guidelines and procedures regarding the provision of programs and services under Section 3317.06, Ohio Revised Code, and the reimbursement of administrative costs.

3. Gertrude W. Donahey is Treasurer of Ohio. Defendant Donahey is the custodian of such state funds as are prescribed by law.

4. Thomas E. Ferguson is Auditor of Ohio. Defendant Ferguson is the chief accounting officer of the state. No money shall be drawn from the state treasury except on his warrant.

5. Defendants, upon information and belief, admit the allegations contained in paragraph 3(c) of the Complaint.

6. Defendants admit the allegations contained in paragraph 3(d) of the Complaint except for the characterization of the use of funds as being for religious purposes.

7. Defendants admit the allegations contained in paragraph 5 of the Complaint.

8. Am. Sub. H.B. No. 155, which was signed into law by the Governor on June 29, 1975 provides appropriation of \$44,400.00, for auxiliary services for the fiscal years 1975-76 and 1976-77.

9. Section 1d of Article II of the Ohio Constitution provides that laws providing for appropriations for the current expenses of the state government and state institutions shall go into immediate effect. If Section 3317.06, supra, is an appropriation law within the meaning of the constitutional provision, it would go into effect immediately. If not it would go into effect 90 days after it was filed with the Secretary of State. The Attorney General has not issued his opinion concerning the effective date of the statute.

10. Plaintiffs have paraphrased and summarized the provisions of the statute in paragraphs 7 and 8 of the Complaint. Insofar as such a summary may constitute an interpretation of the meaning of the statute or conclusions of law, defendants deny the allegations.

11. Section 3317.062 of the Revised Code, which was found invalid by Order of this Court, filed November 17, 1975, was repealed by Am. Sub. S.B. No. 170 which was passed by the General Assembly on August 1, 1975 and filed with the Secretary of State on August 29, 1975. The Order recites that it is not intended to address or adjudicate the constitutionality of Senate Bill No. 170.

12. A substantial majority of the non-public schools in this state are sectarian. All of these schools are required to provide a secular education for their students equivalent to that provided in the public schools. The manner in which the denomination which operates the school. Generally, the school day is expanded and the additional time is used to provide religious instruction. No students attending a non-public school are eligible to receive benefits if their school imposes religious qualifications upon student admissions or faculty appointments.

13. Defendants deny each and every allegation contained in the Complaint which is not expressly admitted herein.

WHEREFORE, defendants having fully answered the allegations contained in the Complaint pray that said Complaint be dismissed.

Respectfully submitted,

WILLIAM J. BROWN  
Attorney General

/s/ Thomas V. Martin  
THOMAS V. MARTIN, Trial  
Attorney, Assistant Attorney  
General  
State Office Tower  
30 East Broad Street,  
17th Floor  
Columbus, Ohio 43215  
(614) 466-8240

/s/ Lawrence H. Braun  
LAWRENCE H. BRAUN, Trial  
Attorney, Attorney at Law,  
Columbus Public Schools  
270 East State Street  
Columbus, Ohio 43215  
(614) 225-2673

Attorneys for Defendants  
Martin W. Essex, State Board  
of Education, Gertrude W.  
Donahey, Thomas E. Ferguson  
and Board of Education of  
the City School District of  
Columbus, Ohio

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Answer of Defendants Martin W. Essex, State Board of Education, Gertrude W. Donahey, Thomas E. Ferguson, and Board of Education of the City School District of Columbus, Ohio was mailed this 9th day of December, 1975 to Joshua K. Kancelbaum, 2121 The Illuminating Building, Cleveland, Ohio 44113, Clyde Ellis and Stanley K. Laughlin, Jr., American Civil Liberties Union of Ohio Foundation, Inc., 203 East Broad Street, Columbus, Ohio 43215, Attorneys for Plaintiffs; and David J. Young, Dunbar, Kienzle, & Murphey, 250 East Broad Street, Columbus, Ohio 43215, Attorney for Defendants Feiganbaum, Grit, Kane & Koloski.

/s/ Thomas V. Martin  
THOMAS V. MARTIN

[filed January 16, 1976]  
IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

Benson A. Wolman, et al., :  
Plaintiffs, :  
v. : Civil Action  
: No. C-2-75-792  
Martin W. Essex, et al., : Judge Kinneary  
Defendants. :

ANSWER OF DEFENDANTS  
GRIT, KANE, KOLOSKI, AND SHAMES

These defendants for their answer to the complaint admit, aver, and deny as follows:

First Defense

1. Upon information and belief admit that plaintiffs are citizens and taxpayers of the United States and of the State of Ohio.

2. Admit that Martin W. Essex is the duly appointed and acting superintendent of public instruction of the State of Ohio; the secretary and chief executive and administrative officer of the State Board of Education of Ohio; and the chief administrative officer of the State Department of Education.



3. Admit that Gertrude W. Donahey is Treasurer of Ohio and that Thomas E. Ferguson is Auditor of Ohio.

4. Admit the identity of the defendants described in paragraph 3(c) of the complaint (with the exception of the substitution of defendant Shames for defendant Feigenbaum) and the identity of the schools attended by their children. Admit that the schools averred in paragraph 3(c) of the complaint are administered by or in coordination with religious organizations. Deny that the schools alleged in paragraph 3(c) of the complaint are recipients or potential recipients of services, materials, or other benefits stipulated in Section 3317.06 of the Ohio Revised Code.

5. Admit that the Board of Education of the school district of Columbus, Ohio is the duly created body corporate and politic which operates the public schools in the Columbus school district.

6. Admit the averments stated in paragraph 4 of the complaint.

7. Admit that the majority of nonpublic schools in Ohio have religious affiliations and that some of such schools include in their curriculum in addition to the state required secular courses, sectarian courses, devotional exercises, and prayer. The secular education provided to students in nonpublic schools is equivalent in content and academic standards to the state-mandated education in public schools.

8. Admit that this Court entered the order pleaded in paragraph 9 but state that

such order was not intended to adjudicate the constitutionality of the legislation at issue herein.

Second Defense

9. Deny each and every allegation in the complaint not herein admitted to be true.

10. A failure to implement Section 3317.06 of the Ohio Revised Code insofar as it provides health and secular educational benefits to nonpublic school pupils in common with other school pupils in the State of Ohio would result in an infringement upon the rights of such pupils and their parents to a free exercise of religion contrary to the First and Fourteenth Amendments of the United States Constitution.

WHEREFORE, these defendants demand that the complaint be dismissed.

/s/ David J. Young  
David J. Young  
DUNBAR, KIENZLE & MURPHEE  
250 East Broad Street  
Columbus, Ohio 43215  
Telephone No. (614)228-4371  
Trial Attorney for Defendants,  
James Grit, Ewald Kane, Helen  
Koloski, and Alvin Shames

CERTIFICATE OF SERVICE

I hereby certify that on the 16 day of January, 1976, a copy of the foregoing answer

was deposited in the United States mail, first-class postage prepaid, addressed to Joshua Kancelbaum, Esq., 2121 The Illuminating Building, Cleveland, Ohio 44113, Clyde Ellis, Esq., American Civil Liberties Union of Ohio Foundation, Inc., 203 East Broad Street, Columbus, Ohio 43215, and Thomas V. Martin, Esq., Assistant Attorney General, State Office Tower, 30 East Broad Street, 17th Floor, Columbus, Ohio 43215.

/s/ David J. Young  
David J. Young

[filed March 16, 1976]  
IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

Benson A. Wolman, et al., :  
Plaintiffs, : Civil Action  
v. : No. C-2-75-792  
Martin W. Essex, et al., : Judge Kinneary  
Defendants. :

STIPULATION OF FACTS

The parties, by and through their counsel, hereby enter into the following stipulation of facts, provided that each party reserves the right to argue the relevance, materiality, interpretation, and legal consequences of such facts. Much of the information in this stipulation concerning the implementation of 3317.06 of the Ohio Revised Code was obtained from the Ohio Department of Education; thus, the stipulation as it relates to implementation procedures is that if Ohio Department of Education officials were called to testify before this Court, their testimony would be as stated in this stipulation.

For the convenience of the Court, the stipulations herein are presented separately under the captions: Procedural Matters, Nonpublic Schools and Nonpublic School Pupils in the State of Ohio, Mechanical Operations

for Implementation of Legislation, Textbooks, Instructional Materials and Equipment, Diagnostic Services, Therapeutic Services, Standardized Testing and Scoring Services and Field Trips and Services.

A. Procedural Matters

1. (a) Plaintiffs are citizens and taxpayers of the United States and the State of Ohio.

(b) Plaintiffs are representative parties who will fairly and adequately protect the interests of the class of persons named in their complaint. Members of the class are so numerous as to make it impractical to bring them all before the Court. The claims of plaintiffs are typical of the claims to relief which other members of the class would assert.

(c) Jurisdiction is properly conferred upon this Court pursuant to Title 28, U.S.C.A., 1331, and this is an appropriate action for the convening of a three-judge court pursuant to Title 28, U.S.C.A., 2281 and 2284.

2. The public <sup>DY</sup>/s/defendants are public officers as described in paragraph 3 of the complaint, having the duties and authorities therein described.

3. The nonpublic school defendants are parents of children attending various church-related or private, nonpublic schools who are in need of the assistance authorized by this Act.

4. Section 3317.06 of the Ohio

Revised Code was duly enacted by the General Assembly of Ohio, duly signed into law, and became effective in its present form on August 29, 1975. A true copy of the bill as enacted by the Ohio General Assembly is attached as Exhibit A.

5. Pursuant to 3317.06 of the Ohio Revised Code, the State Department of Education of Ohio promulgated guidelines on December 17, 1975. A copy of said guidelines is attached to these stipulations as Exhibit B, and said copy is hereby stipulated to be a true copy of said guidelines as adopted.

6. The 111th Ohio General Assembly adopted Amended House Bill No. 155 (general appropriations bills) which included an appropriation of \$88,800,000.00 to implement 3317.06 of the Ohio Revised Code.

B. Nonpublic Schools and Nonpublic School Pupils in the State of Ohio

7. All children in the State of Ohio between the ages of six and eighteen years of age with the exception of those determined to be incapable of profiting from instruction are required to attend a public or nonpublic school which adheres to minimum educational standards prescribed by the State Board of Education or to be instructed at home pursuant to a program satisfying such minimum standards and approved by the State Board of Education. Another exception to the requirement of compulsory education at minimum standard schools may exist with respect to students who attend schools constitutionally exempt (e.g. Amish) from minimum standards. However, pupils who



attend such schools would not be eligible for assistance pursuant to Section 3317.06 of the Ohio Revised Code.

8. The nonpublic schools attended by children who will receive benefits under Section 3317.06 of the Ohio Revised Code are required by law to provide a secular education equivalent to that provided in the public schools in language arts including reading, writing, spelling, oral and written English and literature; geography; the history of the United States and Ohio; national, state, and local government in the United States; mathematics; natural science; health education; physical education; the fine arts including music; first aid; safety; fire prevention; industrial arts; home economics; foreign languages; and business practices.

9. In order to insure that nonpublic schools in Ohio comply with minimum educational standards established by the State Board of Education, such schools are inspected by representatives of the Ohio Department of Education.

10. The total number of chartered nonpublic schools in the State of Ohio during the 1974-75 school year was 720. The number of schools categorized by organizations administering them is as follows:

Catholic	657
Private (non-sectarian)	29
Lutheran	32
Christian	15
Seventh-Day Adventist	15
Jewish	8

Baptist	4
Episcopal	1
Quaker	1

The enrollment of these schools during the 1974-75 school year was:

Catholic	243,545
Private (non-sectarian)	8,701
Lutheran	4,568
Christian	3,224
Seventh-Day Adventist	1,569
Jewish	1,360
Baptist	829
Episcopal	76
Quaker	84

The total number of pupils attending chartered nonpublic schools during the 1974-75 school year amounted to 262,628.

11. Nonpublic school officials, if called, would testify that none of the schools attended by nonpublic school children covered by the statute involved in this litigation discriminate in the admission of pupils or hiring of teachers on the basis of race, creed, color, or national origin. The extent to which teachers in the various church-related, non-public schools are or are not members of the religious faith which administers the schools varies from school to school.

12. The manner in which the various religious and denominational institutions in the State of Ohio relate to the various church-related schools in Ohio varies among different denominations and different school systems.

13. If called to testify, officials of the Columbus Catholic schools would testify that the following facts are true with respect to most of the Catholic schools in the Diocese of Columbus (which are fairly representative of Catholic schools throughout the state of Ohio) but are not necessarily true in regard to other nonpublic schools including private, Lutheran, Christian, Seventh-Day Adventist, Jewish, Baptist, Episcopal, and Quaker schools.

(a) The administrative and policy-making responsibility for these schools is described in pages 2100 through 2123 of the School Policies and Regulations Manual which is attached hereto as "Stipulation Exhibit C." [erroneously "A" in the original]

(b) These schools are generally conducted in buildings and facilities owned or leased by the Bishop of the Columbus Diocese or by an entity representing a religious order.

(c) Most principals of such schools are members of a religious order within the Catholic Church; however, some such principals are members of the laity.

(d) Approximately 31.6% of the elementary and 31.9% of the high school teachers in the schools are priests, nuns, or otherwise members of Catholic religious orders who have taken vows of obedience to the Church. Catholic school representatives, if called, would testify that none of these teachers have vowed to obey the Church with reference to what they teach in school or how they teach it, that these teachers have not vowed to teach religious doctrine in

secular courses, and that their vow of obedience does not relate to these matters. Most religious teachers have discontinued the wearing of distinctive garb while engaged in teaching in the schools.

(e) Many of the classrooms, hallways, and assembly areas within such schools are decorated with a Christian symbol, such as the crucifix, as well as an American flag. Secular courses are often taught in a classroom containing a crucifix.

(f) All teachers and administrators within the schools are employees of the schools.

(g) Such schools in order to comply with the state minimum standards teach all of the required subjects during the five hour school day required by such state standards. In addition to this, they expand their school day to five and one-half hours, and the additional one-half hour is usually devoted to religious instruction. The scheduling of this added one half hour varies from school and is not necessarily at the beginning or end of the school day. Many public schools also provide more than the minimum standard five-hour school day in the instances when it is desired to provide education beyond that required by the minimum standards. hour is usually devoted to religious instruction. Such schools also program various religious functions and exercises, but such are either held during the religious course or the required five hour school day. Such religious exercises and practices include devotional activities, special religious activities on days of significance in the Christian calendar,



daily prayer, instruction concerning mass, confession and first communion, and religious vocational instruction if pupils indicate an interest in such. During the religion class, pupils are also taught the Catholic Church's views on topics of social concern such as marriage, divorce, sexual morality, family planning, abortion, and sterilization. Such subjects are discussed at appropriate grade levels and are not programmed for discussion except in religion classes. During the required secular course classes, pupils are taught course content generally equivalent to that taught in such classes in the public schools. Pupils who are not members of the Catholic faith are not required to attend religion classes or to participate in religious exercises or activities.

(h) The pupils in the schools who take religion courses are separately tested and graded on what they have learned in such religion classes. No testing fees are charged for any such tests.

(i) Some Catholic parish schools have tuition scales which require a higher tuition for pupils whose children are not members of the parish than for those whose parents are members of the parish. However, the tuition for nonparishioners applies to pupils and parents of the Catholic faith as well as to others. The typical situation where a Catholic parent with a Catholic child would pay the nonparishioner tuition scale would be where a Catholic parent lived within a parish boundary where a parish did not have a school, had a school which did not encompass all grades, or had a school which was not to the liking of that parent.

(j) Teachers of secular subjects include members of almost all religious faiths and sects, but in all probability a majority of the teachers are members of the Catholic faith.

(k) Lay teachers are hired by the schools after interviews with the principal of the school and with representatives of the local school board of education.

(l) A team appointed by the Diocesan Board of Education has authority to negotiate the salaries of teachers in the schools.

(m) No teacher in a Catholic school in the state of Ohio is required by the organization administering the school to teach religious doctrine as a part of or to integrate religious doctrine into the required secular courses taught in that school.

#### C. Mechanical Operations for Implementation of Legislation

If Ohio Department of Education officials were called to testify before this Court, their testimony with respect to implementation of Section 3317.06 of the Ohio Revised Code as described in sections (C) through (I) of this stipulation would be as follows:

14. The money used for implementation of this legislation comes from the general fund of the State of Ohio and is appropriated by the Ohio General Assembly to the Ohio Department of Education. The Ohio Department of Education allocates these



funds to the appropriate local school districts twice a year. The local public school districts will utilize the money to either purchase approved secular textbooks, instructional materials and equipment, standardized testing and scoring services and field trip transportation or to provide diagnostic and therapeutic services pursuant to the Act. In the event of the purchase of textbooks, instructional materials and equipment or standardized testing, the local public school districts will pay the money directly to the supplier and will retain title to the materials. When diagnostic and therapeutic service personnel are provided, these personnel will be hired by the local public school districts, their salaries will be paid by the local public school districts, and these employees will be entitled to all of the state-required fringe benefits. None of the monies appropriated for the implementation of the Act will be paid over to a nonpublic school.

15. Services or materials authorized by the Act are initiated by an application submitted to the local public school district from nonpublic school representatives. This application receives administrative approval by the local public school district personnel after consultation with one of the Ohio Department of Education field service coordinators. There are 33 such coordinators in 13 regional offices throughout the State of Ohio. These coordinators provide field management services for the Ohio Department of Education with regard to pupil transportation, distribution of all state monies to local school districts, driver education, disadvantaged youth programs, and auxiliary services. Before the benefits under the Act

are provided, the application must also receive formal approval from the local public school board of education.

16. Diagnostic and therapeutic service personnel hired by the local public school district to service nonpublic school pupils will receive their paychecks from the local public school district the same as any other public school teacher or public school diagnostic and therapeutic service personnel.

D. Textbooks

17. Division A of 3317.06 of the Ohio Revised Code provides for the loaning of textbooks to pupils attending nonpublic schools or to their parents. The books that may be loaned are limited to those which are acceptable for use in public schools in the state.

18. The loaning of textbooks will be based upon individual requests submitted by nonpublic pupils or their parents. These requests will be summarized by the nonpublic school and forwarded to the appropriate public school official.

19. The secular textbooks used in nonpublic schools will be the same as the textbooks used in the public schools of the state. Common suppliers will be used to supply books to both public and nonpublic school pupils.

20. Textbooks, including book substitutes, provided under this Act shall be limited to books, reusable workbooks, or manuals, whether bound or in looseleaf form, intended for use as a principal source of

study material for a given class or group of students, a copy of which is expected to be available for the individual use of each pupil in such class or group.

E. Instructional Materials and Equipment

21. A list of the materials and equipment supplied under earlier laws is attached as Exhibit D. [erroneously "C" in the original] It is expected that materials and equipment loaned to pupils or parents under the new law will be similar to such former materials and equipment except to the extent that the law requires that materials and equipment capable of diversion to religious issues will not be supplied. Plaintiffs reserve the right to argue that the two stated differences are not significant and that the restriction against supplying materials and equipment incapable of religious diversion cannot in fact be implemented.

22. This Act authorizes the employment of clerical personnel by local public school districts to administer the process of loaning instructional materials and equipment to pupils or their parents. The duties of these clerical personnel will include the following:

- a. Distribution of loan request forms
- b. Receipt and cataloging of loan requests
- c. Maintaining an inventory of instructional materials and equipment
- d. Distribution of instructional material and instructional

equipment to eligible nonpublic pupils or their parents

- e. Collection of instructional material and instructional equipment
- f. Maintaining custody and storage of materials and equipment
- g. Performs all other duties necessary for the efficient implementation of the materials and equipment program.

23. The equipment and materials loaned to nonpublic school pupils or their parents pursuant to the Act are required by law to be used to supplement courses required to meet the minimum standards for elementary and secondary education adopted by the State Board of Education.

24. Most public schools will purchase all equipment and materials including those to be loaned to nonpublic pupils or their parents from common suppliers. Large systems will use the bidding process and include all items on the list regardless of whether or not they are to be used by the public or nonpublic pupil. The same personnel will make purchases for both public and nonpublic pupils and can readily assure that they are secular since they are purchased as public school items.

F. Diagnostic Services

25. These services are to be provided in the nonpublic school and would include speech and hearing diagnosis, psychological diagnosis and physician, nursing, optometric and dental diagnosis. The purpose of these



services will be towards determining if nonpublic pupils are deficient or in need of assistance in these areas. For example, the speech and hearing therapist would screen children to identify those with speech or hearing deficiencies. Treatment, if any, of the defect would take place off the nonpublic premises. Personnel (with the exception of physicians) employed to perform these services are employees of the local board of education. Physician service will be on a contract basis if that procedure is followed in the local public school district.

26. Nonpublic school administrators will coordinate the use of diagnostic service personnel by scheduling, providing space, and in some instances, identifying the children needing specialized diagnostic services. However, the diagnostic personnel are employed by the public board of education and under their control as to specific duties.

27. The diagnostic personnel who will provide services under this section like any other certificated person hired by the public school district, are subject to periodic inspection by supervisors sent out by the Minimum Educational Standards Division of the Ohio Department of Education. Although these personnel are subjected to periodic inspection visits by supervisors, such visits are for the purpose of determining whether they are engaged in the proper performance of their specialty. The state presumes that the health diagnostic services will be secular, since these personnel are hired by the public school, are trained in a designated specialty, are hired to perform services within that specialty, are

instructed to perform services only within their specialty because the authorized services are limited to diagnosis of health problems. In view of these facts, no state employee will inspect to see if these health diagnostic personnel concern themselves with religious matters.

28. A description of the functions of the diagnostic service personnel prepared by the State Department of Education follows:

(a) Functions of Speech & Hearing Therapy Staff

- i. The function of the diagnostic speech and hearing therapist is to identify children who have speech and hearing handicaps and to refer them to the therapeutic speech and hearing therapist for treatment.
- ii. He cooperates with the physician and nurse in the development of an appropriate hearing testing program to identify children with hearing problems.

(b) Functions of Psychological Staff

- i. The function of the diagnostic psychological personnel is to identify children with psychological problems by utilizing child-study techniques, which include: a) a variety of recognized individual tests of aptitude, b) individual measures to determine social and behavioral adaptability and



perceptual-motor problems, c) criterion reference instrumentation and interviewing and d) projective procedures.

- ii. Children who require follow-up attention as determined by the child-study techniques are referred to the therapeutic psychological staff for treatment off the nonpublic school premises.

(c) Functions of the School Physician

- i. He provides physical examinations of children entering school for the first time.
- ii. He provides physical examinations of other children referred to him by members of the diagnostic services staff.
- iii. He provides physical examinations for high school students seeking health permits.

(d) Functions of the School Dentist

- i. He provides examinations, diagnosis and corrective dental treatment for children whose parents could not otherwise afford such care. The criteria for this determination shall be the same as that used for public school children.
- ii. He provides guidance in establishing an oral hygiene program for the student body.

(e) Functions of the School Nurse

- i. Aids in formation of policies and objectives of the school health service program and functions as part of the school health team.
- ii. Determines health status of students by means of health appraisals.
- iii. Interprets the health and developmental status of the student to himself, parents, and school personnel.
- iv. Cooperates with Public Health in the control of communicable diseases.
- v. Maintains orderly and current health records.
- vi. Implements first aid and care of the sick or injured according to school policies.
- vii. Works with school administrative staff, parent groups and students in promoting a safe and healthful environment in the school.
- viii. Evaluates Health Services.

29. If sample health diagnostic specialists in each of these areas were called to testify, they would testify that the pupils requiring their services would typically be taken from the classroom individually and

that the diagnosis would be provided in a separate room or area of the building.

30. If called to testify under oath, the Ohio Department of Education officials would state to the Court that they do not intend under this legislation to approve applications for basic classroom instructional services. Such officials interpret this section as permitting only diagnostic services and further interpret this to exclude basic classroom instruction.

#### G. Therapeutic Services

31. These services would include therapeutic speech and hearing, therapeutic psychological, remedial, guidance and counseling, and services for children who are deaf, blind, emotionally disturbed, crippled, or physically handicapped. Each of these services can only be provided in the public school, in public centers or in mobile units located off the nonpublic premises. Personnel performing these services would be employees of the local board of education or under contract with the State Department of Health.

32. The determination as to whether these programs would be offered in the public school, public center, or mobile unit will depend on the distance between the public and nonpublic school, the safety factors involved in travel, and the adequacy of accommodations in public schools and public centers.

33. If a program is to be offered at a public center such as a library, public meeting hall, firehouse, or recreation

center, services may be available for public and nonpublic pupils at the same center. Although some local school districts in Ohio provide services to public school pupils in mobile units, when services are provided to nonpublic pupils in such units they will in all probability be stationed on public property close to the nonpublic school of attendance. These units will not be parked on nonpublic premises. While so stationed, the personnel in the unit will be providing services solely to nonpublic school pupils except in unusual circumstances where public school pupils would also receive services in the unit because of considerations relating to space, relative location, and efficient use of personnel.

34. If sample therapeutic service personnel in each of these areas were called to testify, they would testify that the pupils needing their services would be serviced either individually or with a small group of students having similar problems and that the service would be provided in the public school, public center or a mobile unit.

35. Nonpublic school administrators will coordinate the use of therapeutic service personnel by scheduling and in some instances, identifying the children needing specialized services. Since these persons are employed or contracted for by the public school board of education, they will be under their control as to specific duties.

36. A description of the functions of the therapeutic personnel prepared by the State Department of Education follows:

(a) Functions of the School  
Psychological Services Staff

- i. The primary function of the therapeutic school psychologist shall be the intensive study and planned services to children, teachers and parents based on a differentiated referral system which includes child-study, scheduled parent and teacher conferences, psychological report writing and planning, implementing and monitoring intervention strategies.
- ii. All comprehensive individual studies should be accompanied by concise written reports which include identifying data, reason for referral, interpretation of observational and assessment data, planned systems for teaching and reinforcement, specific recommendations for intervention, remediation and follow-up with the child, teacher and/or parent.
- iii. The school psychologist should cooperate with appropriate community agencies, resources and facilities concerned about children with psychological problems.

(b) Functions of the Speech and  
Hearing Therapy Services Staff

- i. The primary function of the speech and hearing therapist is to provide therapeutic services for children who have various speech problems. These include: a) defects of articulation and rhythm, b) voice disorders, c) disorders of speech and voice associated with organic abnormalities resulting in hearing loss and d) speech disorders associated with delayed or disturbed language development.
- ii. The speech therapist should assist children in the transfer of newly acquired skills to the classroom.
- iii. The speech and hearing therapist should work with appropriate community agencies, resources and facilities concerned about children with speech and hearing defects.

(c) Functions of the Guidance  
Services Staff

- i. Individual and group counseling: Individual counseling assistance shall be easily accessible and promptly available to all students on matters of concern to them. Planned individual or small group counseling initiated by the counselor includes assistance to students in: a) developing self-understanding



through interpretation of test performances and other experiences, b) developing meaningful educational and career goals, and c) planning school programs of study.

- ii. Group Guidance Instruction: Guidance instruction shall be systematically provided at each grade level.
- iii. Parent Consultation: Individual conferences and group meetings are planned, initiated, and provided for purposes of discussing with parents their children's a) educational progress and needs, b) course selections, c) educational and vocational opportunities and plans, and d) study skills.
- iv. Student Information Service: Information about individual students is collected and organized in cumulative guidance records. The information is available for interpretation to staff, parents, and students concerned.
- v. Guidance Information Service: Current information materials are organized and easily available for use by staff and students.
- vi. Guidance Research and Evaluation Service: Organized

provision is made to identify and describe the characteristics, accomplishments, and needs of student groups. Periodic surveys of current students and follow-up studies of graduates and dropouts are conducted to evaluate the effectiveness of the guidance program in achieving its objectives.

- (d) Functions of the Learning Disability Staff Assisting the Deaf, Blind, Emotionally Disturbed, or Physically Handicapped Child.
  - i. Assesses the academic and instructional needs of the disabled child.
  - ii. Designs an instructional plan, based on the assessment information.
  - iii. Implements the instructional plan including the management of other disabled children within a group setting.
  - iv. Periodically communicates with parents as to the progress of their children in writing and in personal conferences.
  - v. Routinely evaluates each child's school progress.
- (e) Functions of the Remedial Services Staff

- i. Provide service to children whose problems are serious enough to warrant attention beyond that given in the classroom.
- ii. Diagnose specific disabilities.
- iii. Prescribe corrective programs for specific disabilities.
- iv. Design corrective programs which are individualized.
- v. Organize such instruction.
- vi. Select materials and exercises which are suitable to the child's ability and instructional needs.
- vii. Provide information to classroom teacher so there is reinforcement of skills and attitudes learned in the remedial program when the child returns to the regular classroom program.

H. Standardized Testing and Scoring Services

37. Division J permits the local public school district to supply to pupils attending nonpublic schools such standardized tests and scoring services as are in use in the public schools of the state. Such tests are used to measure the progress of students in secular subjects.

I. Field Trip Transportation

38. Division L permits local public school districts to provide such field trip transportation services as are provided to public school students. Field trips would consist of visits to governmental, industrial, cultural, and scientific centers designed to enrich the secular studies of students.

39. Intent and Policy of Department

The foregoing stipulated testimony of State Department of Education officials reflects the intent and policy of the State Department of Education with respect to implementation of Section 3317.06 Ohio Revised Code. The new law has not been implemented because of a temporary restraining order. Thus, the stipulation can only go to the intent and policies of the Department of Education rather than to the precise manner in which that intent of policy will or will not be carried out in all instances.

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STIPULATION OF FACTS - EXHIBIT A

[Stipulation Exhibit A, §3317.06 of the Ohio Revised Code, is set forth in the Appendix of the Jurisdictional Statement.]

STIPULATION OF FACTS - EXHIBIT B

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GUIDELINES FOR IMPLEMENTATION OF  
SECTION 3317.06 AND DIVISION P OF  
SECTION 3317.024 OHIO REVISED CODE  
PROVIDING FOR LOANING OF TEXTBOOKS,  
INSTRUCTIONAL MATERIALS, AND  
INSTRUCTIONAL EQUIPMENT TO NON-PUBLIC  
PUPILS OR THEIR PARENTS; TO  
PROVIDE SERVICES TO PUPILS ATTENDING  
APPROVED NON-PUBLIC SCHOOLS.

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I. GENERAL GUIDELINES

- A. Funds shall be allocated to public school districts to purchase textbooks, instructional materials, and instructional equipment for loan to non-public pupils or their parents, and to provide services to pupils attending eligible non-public schools.
- B. Non-public pupils or their parents may be loaned such textbooks, instructional materials, instructional equipment and may be provided services if the non-public school of attendance meets the following criteria:
  - 1. Chartered by the State Board of Education.
  - 2. Does not discriminate in the admission of pupils or hiring of teachers on the basis of race, color, creed, or national origin.



- C. All requests for such textbooks, instructional materials, instructional equipment, and services shall be submitted on forms prescribed by the State Department of Education.
- D. The public school district shall approve requests for textbooks, instructional materials, instructional equipment and services prior to the implementation of the program. Consultant services on the approval of requests may be provided by the State Department of Education.
- E. Expenditures by public school districts for textbooks, instructional materials, instructional equipment, and services pursuant to Section 3317.06 O.R.C. shall not exceed the amount allocated to the district for the purposes of implementing such section.
- F. Each public school district may retain not more than three (3) percent of the maximum allocation for non-public schools within the district, to defray the administrative, accounting, and handling costs related to the provisions of Section 3317.06 O.R.C.
- G. No school district shall loan textbooks, instructional materials, instructional equipment, or provide services for use in religious courses, devotional exercises, religious training or any other religious activity.

- H. All services to be provided to pupils attending non-public schools must be available for pupils in the public school district in which the eligible non-public school is located.
- I. Textbooks, instructional materials, and instructional equipment shall be on loan to eligible non-public pupils or their parents by the public school district in which the non-public pupil attends school.
- J. "Parent" as used in these guidelines shall include a person standing "in loco parentis" to a child.

## II. TEXTBOOK GUIDELINES

- A. The public school district shall purchase and loan secular textbooks to pupils attending non-public schools within the district or to their parents.
- B. The loaning of textbooks shall be based upon individual requests submitted by such non-public school pupils or their parents.
- C. Requests for textbook loans shall be summarized by the non-public school and forwarded to the public school district.
- D. Textbooks loaned to non-public school pupils or their parents shall be in compliance with Section 3329.01, Ohio Revised Code.

- E. Textbook shall be defined to mean any book or book substitute which a pupil uses as a text or a text substitute in a particular class or program in the school he regularly attends.

### III. INSTRUCTIONAL MATERIALS AND INSTRUCTIONAL EQUIPMENT GUIDELINES

- A. The public school district shall purchase and loan instructional materials and instructional equipment to eligible non-public pupils or their parents.
- B. All instructional materials and instructional equipment shall be secular, neutral, and non-ideological.
- C. All instructional materials and instructional equipment shall be similar to those in use in the public schools within the district.
- D. All instructional materials and instructional equipment shall be incapable of diversion to religious use.
- E. Instructional materials and instructional equipment may be stored on the premises of the non-public school of attendance when in the determination of the State Department of Education it is necessary and appropriate for efficient implementation of this program.
- F. The public school district may employ clerical personnel whose duties shall

include the following:

1. Distribution of loan request forms.
2. Receipt and cataloging of loan requests.
3. Maintain an inventory of instructional material and instructional equipment.
4. Distribution of instructional material and instructional equipment to eligible non-public pupils or their parents.
5. Collection of instructional material and instructional equipment.
6. Custody and storage of items under this guideline.
7. Performs all other duties necessary for the efficient implementation of the program under this guideline.
8. Clerical personnel may perform their services upon the premises of the non-public school, when in the determination of the State Department of Education, it is necessary and appropriate for efficient implementation of this program.

### IV. SERVICE PROGRAM GUIDELINES

- A. Diagnostic Services

1. Diagnostic service shall only include the following programs:
    - a. Speech and hearing diagnosis
    - b. Physician, nursing, dental and optometric diagnosis
    - c. Diagnostic psychological services
  2. Such diagnostic services shall be provided in the non-public school attended by the non-public pupil receiving the service.
  3. Such services shall not be provided to non-public pupils unless such services are available to pupils attending public schools within the district.
  4. Diagnostic services may be provided under contract with the State Department of Public Health.
- B. Health, Remedial, and Guidance and Counseling Services
1. Service program shall only include the following programs:
    - a. Therapeutic psychological services
    - b. Therapeutic speech and hearing services
    - c. Remedial services

- d. DBECN and EMR services
  - e. Guidance and counseling services
2. Such programs shall not be provided to non-public pupils unless such services are available to pupils attending the public schools within the district.
3. The State Department of Education shall determine if the program shall be provided in the public school, in public centers or in mobile units off the non-public premises.
4. If programs are provided in the public school or in public centers and transportation is necessary, the transportation shall be provided by the public school district in which the non-public school is located.
5. The cost of transporting pupils in these programs shall be paid by the public school district from its General Fund when such programs are offered in the public school or in public centers.
6. Therapeutic psychological and speech and hearing services may be provided under contract with the State Department of Public Health.



C. Standardized Tests and Scoring Services

1. The public school district shall supply standardized tests and scoring services for use by pupils attending non-public schools within the public school district.
2. Standardized tests and scoring services provided hereunder shall include only (a) such tests and scoring services as are in use in the public schools of Ohio, and (b) appear on a list maintained by the State Department of Education.

D. Field Trips and Services

1. Field trip transportation and field trip services shall be provided to non-public school pupils as is provided to public school pupils in the district.
2. School districts may contract with commercial transportation companies for such transportation service if school district buses are unavailable.

V. FUND DISBURSEMENT GUIDELINES

- A. The State Department of Education will distribute funds for each fiscal year for which funds are appropriated to the public school district for the purpose of implementing Section 3317.06 of the revised code in the following manner:

1. In September (50) percent of an estimated allotment for the purpose of providing services and loaning of textbooks, instructional materials, and instructional equipment to non-public pupils.
  2. In January, the remainder of the actual maximum allocation, as determined by the October non-public average daily membership, will be disbursed.
- B. The October non-public average daily membership may include only pupils enrolled in grades one through twelve.
- C. Payments to public school district to loan textbooks, instructional materials, instructional equipment, and to provide services, as identified in these guidelines, will be made regardless of the provisions of Section 3317.01 O.R.C.
- D. Unencumbered and unexpended funds, at the close of the first year of the biennium, for a non-public school shall be carried forward into the succeeding fiscal year by the public school district to purchase textbooks, instructional materials, and instructional equipment for loan to non-public pupils or their parents and to provide services to the non-public pupils during the second year of the biennium.
- E. Unencumbered and unexpended funds at the close of the second year or the

biennium shall be returned to the Treasurer, State of Ohio.

- F. Funds allotted for non-public pupils attending non-public schools located within the public school district for which no requests have been submitted shall be returned to the Treasurer, State of Ohio, after the close of each fiscal year.
- G. A report of expenditures, for each chartered non-public school within the public school district, shall be filed by the public school district, with the State Department of Education on or before November 15, following the close of the fiscal year for which funds were expended, on forms prescribed by the State Department of Education.
- H. For fiscal year 1975-76, the State Department of Education may modify any of the guidelines of this section relating to distribution of funds as may be determined necessary in order to distribute funds to be utilized during the school year.

STIPULATION OF FACTS - EXHIBIT C

Diocese of Columbus

ADMINISTRATION \*\*

Central Administration

A. THE MOST REVEREND BISHOP

Full responsibility for the educational apostolate in the diocese belongs ex officio to The Most Reverend Bishop. He associates others with himself in this work by appointing agencies and individuals to assist him.

B. THE VICAR EPISCOPAL FOR EDUCATION

He is appointed by the Most Reverend Bishop to direct the Department of Education and is responsible for the overall direction of the educational programs in the diocese.

C. DIOCESAN BOARD OF EDUCATION

The Board is established by the Bishop for the purpose of formulating educational policies for the schools under his jurisdiction.

In addition to its policy-making responsibility, the Board of Education also reviews and approves regulations and projects recommended by the Superintendent of Schools.

Furthermore, the Board of Education will consider educational issues presented to it by any of the clergy, religious, or laity of the diocese, provided these issues fall within its competence as a policy-making body.

D. SUPERINTENDENT OF SCHOOLS

The Superintendent shall be responsible directly to the Diocesan Board of Education for the implementation of its policies in the Diocese.

It shall be the responsibility of the Superintendent to work out guidelines for administrative procedures, including those areas in which it will be presumed that he will act without explicit directives from the Board.

The Superintendent of Schools shall represent the schools of the diocese in matters relating to the State Department of Education and local school officials.

Central and Supervisory Personnel

A. Department of Elementary and Secondary School.

The administrative staff of the Superintendent of schools comprises the Assistant Superintendent of Schools; Diocesan Supervisors for: Instruction, Government Aid, Educational Media Centers, School Food Services; the Chairmen of the Curriculum Committees; and the clerical staff.

B. Department of Religious Education.

The Department of Religious Education is under the jurisdiction of the Episcopal Vicar of Education and is administered by the Director of Religious Education and his staff of supervisors.

All areas of Religious Education are subject to the direction and supervision of the Department of Religious Education. This includes:

1. Adult Religious Education.
2. Elementary and Secondary Religious Education for parochial and CCD schools.
3. Special Education for the Handicapped, (The Blind, Deaf, Retarded).

The Pastor

1. The Pastor is ex officio responsible for the welfare of the parish school. His principal responsibility is to see that an effective program of religious education is maintained in the school. The immediate direction of the school and its instructional program is, however, delegated to the Principal.
2. The Pastor and Principal shall hold regularly scheduled conferences on the activities of the school. The Pastor shall cooperate with the Principal in all things that pertain to the school.



3. The Pastor shall cooperate with the Diocesan Board of Education and the Superintendent of Schools in observing all diocesan and state regulations pertaining to the administration and organization of the schools.
4. It is recommended that the Pastor share his responsibility for the parish school with a representative group of parents and parishioners. This group (Parish School Board, Education Committee, Educational Consultants, etc.) shall be charged with the formulation of policies to govern the operation of the school.  
  
All such policies, however, must be in accordance with those set by the Diocesan Board of Education. They should, moreover, be broad enough to allow the Principal sufficient flexibility in the operation of the daily program, yet narrow enough to provide clear direction for the administration of the school.
5. The maintenance of buildings and grounds is the responsibility of the Pastor.

#### Supervisor

A diocesan supervisor is a member of the Diocesan Department of Education and is directly responsible to the Diocesan Superintendent. She is his representative in the professional relations with principals and teachers.

The diocesan supervisor shall strive to make diocesan school policy better known, thereby encouraging more consistent observance of

diocesan regulations. The supervisor shall work with the principal and her teaching staff to improve the teaching-learning situation.

- A. The general supervisor shall seek to carry out her role through the following activities:
  1. Visiting every school at least once a year.
  2. Publishing diocesan bulletins whenever a need arises.
  3. Organizing and working with diocesan curriculum committees.
  4. Planning in-service growth programs for teachers and principals.
  5. Assisting the principal in her supervisory role and in her direction of curriculum planning and development.
- B. The special area supervisor brings expertise in such fields as religion, language arts, educational media.

The Religion Supervisor shall visit the schools of the diocese once a year. She shall function as a resource person in the area of religious education, providing in-service workshops for the teachers and coordinating the religion programs of the diocesan elementary schools with the policies set by the Department of Religious Education.

She shall assist in the implementation of

total religious education programs in the parishes of the diocese, whether or not such parishes have parochial schools.

The Language Arts Consultant (Grades 7 through 10) shall assist in setting up pilot programs in schools that request them; shall work with the elementary and secondary curriculum committees in setting up goals and objectives; shall act as a resource person available for consultation about time, materials and techniques; and shall facilitate the calling of meetings for teachers at the local level, the area level and the diocesan level.

The Diocesan Reading Coordinator strives for the diocesan school goal that all students leaving the system be able to read to the full limits of their capability. To accomplish this, reading instruction in the elementary schools is supervised by giving whatever assistance is necessary to teachers, parents and students.

The Multi-Media Supervisory Staff is available for consultation when its members visit the Multi-Media Centers in the schools; the staff conducts workshops and seminars, helps, in the selection of resource materials, in the planning of facilities and in the ordering of auxiliary materials from the state.

STIPULATION OF FACTS - EXHIBIT D

[Extract from Stipulation of Facts in prior case]

D. Materials and Equipment

19. Although it is antitipated that increased funding will be used to provide auxiliary educational and health service personnel, assistance provided under the Act since 1967 has included instructional materials as appear on approved public school purchase lists. It is anticipated that these instructional materials will continue to be provided from time to time along with the increased level of auxiliary educational and health service personnel. In order to determine the kinds of materials and equipment supplied under the Act, a survey was accomplished of various local public school districts in the state including two large districts, two medium-sized districts, and two small districts. The equipment and supplies provided by those districts for the benefit of non-public school pupils include:

Lima City--Allen County School District

Equipment:

Audio visual projector  
Reading projectors  
Science film strips  
Health film strips  
Music records  
Test scorer  
Teaching tapes  
Stereo record player  
Micro projector  
Mobile science laboratory  
Film strip projector

Science records  
Maps and globes  
Music books  
Storage cabinets  
Combo pact  
Study guides  
Picture prints  
Reading cassettes  
Social studies tapes

Supplies:

Science kits  
Supplementary readers  
Arithmetic kits  
Scholastic testing programs  
Reading laboratory kits  
Reading tests  
Answer sheets

Cincinnati City School District

Equipment:

Overhead projector  
Film strip projector  
Tape recorders  
Record players  
Slide projector  
Film strips and slides  
Head sets  
Reading pacer with film  
Sewing machines  
Typewriters  
Library chairs

Supplies:

Paper  
Duplicating paper

Masters  
Supplies for science class  
(glassware, etc.)

Indian Creek Local, Jefferson County School District

Equipment and Supplies:

Weather forecasting charts  
Lunar terrain models  
Fossil collections  
Metric system materials  
Maps - solar system  
Maps - social studies  
Flash cards  
Vegetable-fruit poster cards - language arts  
Word games - language arts  
Flannel boards  
Look and say tests

Toledo City School District

Equipment:

Reading  
1. Pacers  
2. Tachistoscopes  
3. Laboratories  
Projectors  
1. Movie  
2. Opaque  
3. Overhead  
Televisory  
1. Video tape machines  
2. Receiver sets (color and black/white)  
3. Cameras  
Audio recorders  
Maps and Globes  
Primary typewriters



Copy machines for instructional materials  
Dictation machines  
Shelving for books

Supplies:

Remedial reading  
Science  
Felt board supplies  
Tapes, films, and books  
Copy paper  
Encyclopedias

Mansfield City School District

Equipment:

Film strip projectors  
Record players  
Moving picture projector  
Gymnastic  
Overhead projectors  
Shadow scope reading pacers  
Acoustic carrels  
Tape recorders  
Television set  
Audio readers  
Rotomatic  
Youth torso for science  
Projector screen  
Tables (for projector equipment)  
Transparency maker  
Tripod map screen  
Headphones  
Electro-static generator with discharger,  
meters, wire testing apparatus  
Terrarium  
Thickness mats  
Junior scooters  
Plastic hand viewers

Supplies:

Reading skill library  
Master manual  
Books (e.g., social science periodicals,  
history books and history guides, English  
workbooks and guides, and dictionaries)  
Learning kits (e.g., reading skill library,  
reading labs, arithmetic labs, etc.)  
Units of art materials  
Accompanying records for film strips  
Speech master units  
Units of science equipment  
Various issues of magazine periodicals  
Projector replacement bulbs  
Recording tapes  
Typewriting textbooks  
Shorthand books  
Supplies for transparency maker

Westerville City School District

Equipment:

Tape recorders  
Overhead projectors  
Record players

Supplies:

Film loops  
Library books  
Pre-recorded cassettes  
Miscellaneous media materials

ORDER AND OPINION BELOW

[The Order and Opinion Below appears in the  
Appendix to the Jurisdictional Statement at  
pp. A1-A33.]